



Tobacco Control
Legal Consortium



Nicotine Taxation

Tobacco Settlement Revenue Oversight Committee
November 2, 2015



Public Health
Law Center

Key Topics

- Taxes and public health
- The tobacco tax landscape
- E-cigarette taxes



Taxes Protect Public Health

Increasing the price of tobacco products is the single most effective way to reduce consumption.

(Institute of Medicine, U.S. Surgeon General, World Health Organization)

Excise tax is the most important policy-related determinant of tobacco prices.

(2014 U.S. Surgeon General's Report)

The 2009 Tobacco Control Act



FDA cannot:

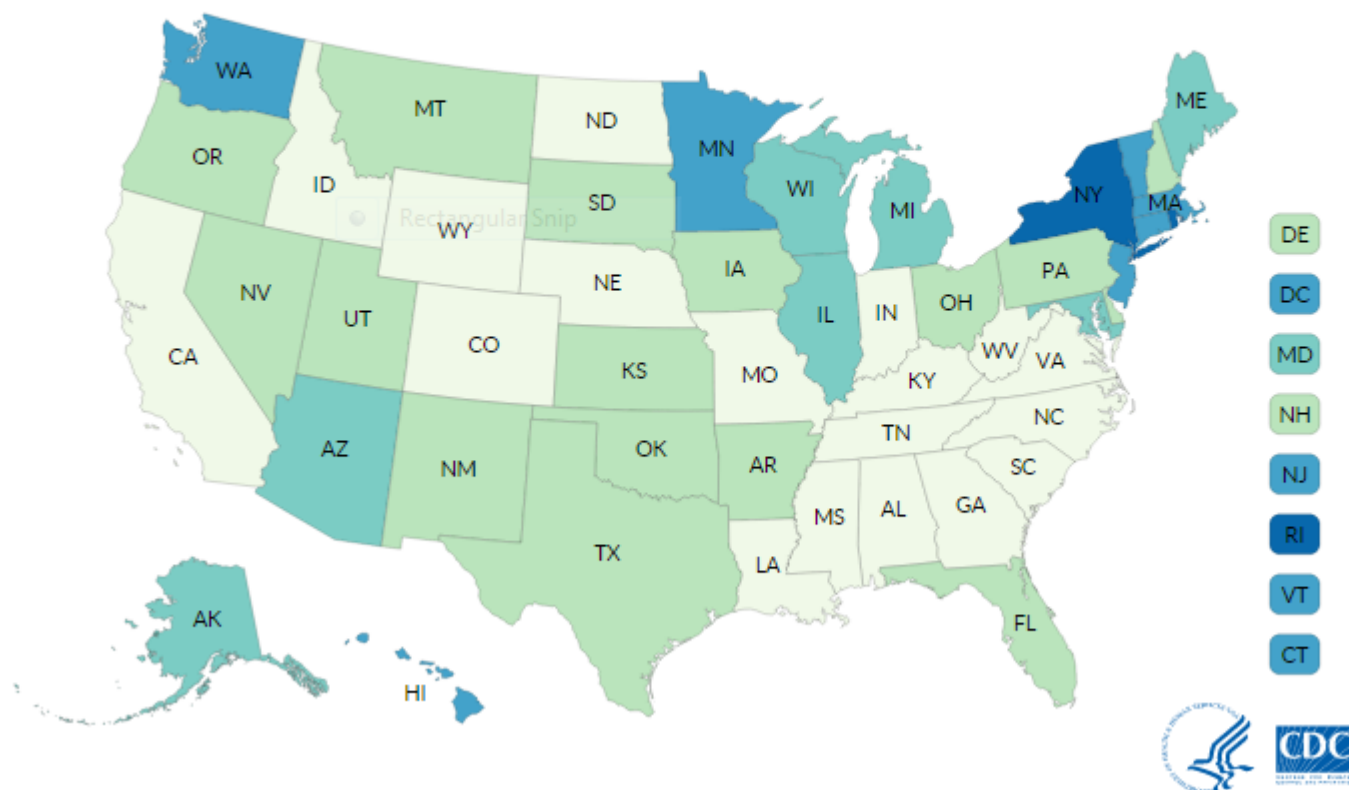
- Prohibit the use of tobacco products
- Prohibit the sale of an entire class of tobacco product
- Prohibit the sale of tobacco products in a specific category of retail outlets
- Require a prescription for tobacco products
- Levy taxes on tobacco products
- Raise the minimum purchase age of tobacco products

State Taxes on Cigarettes

Excise Tax Rates on Cigarettes (CDC STATE System Tobacco Legislation - Tax) (In effect as of September 30, 2015)

About This Map

- \$0.17 - \$<1.006
- \$1.006 - \$<1.842
- \$1.842 - \$<2.678
- \$2.678 - \$<3.514
- \$3.514 - \$<4.35



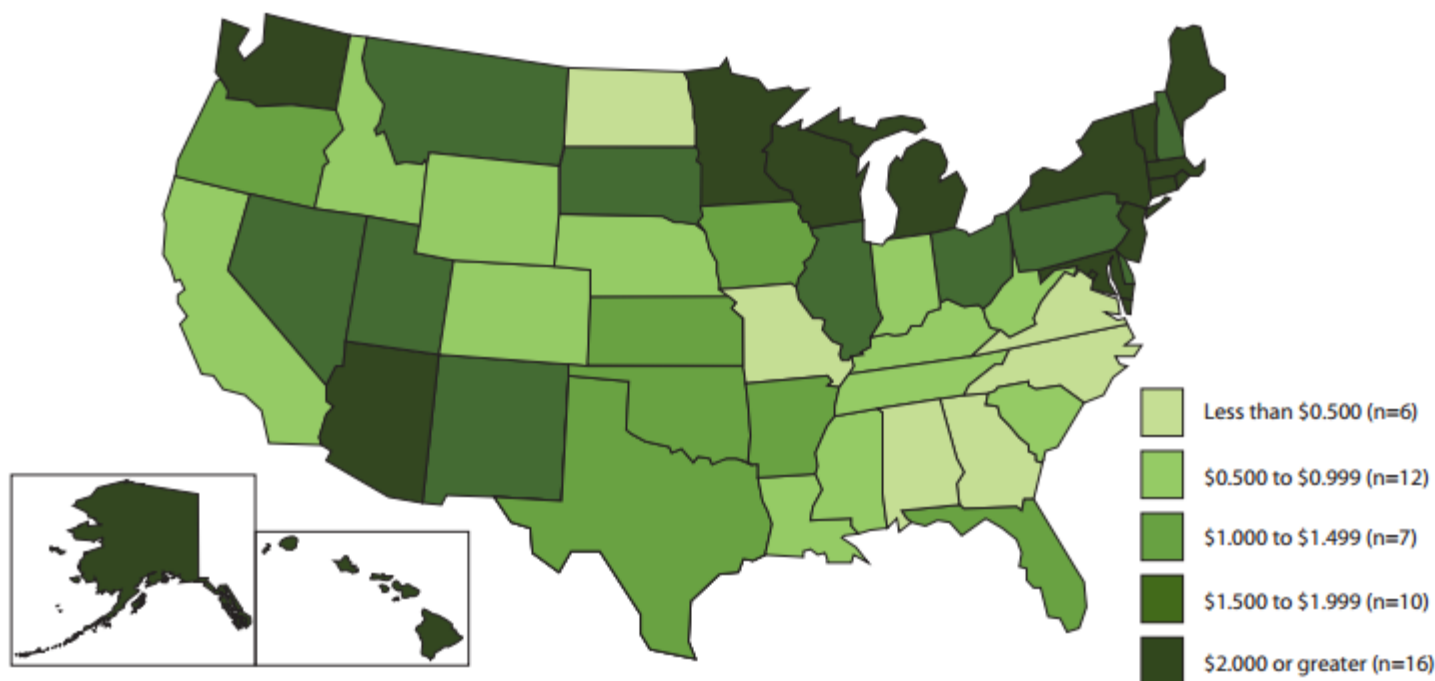
<http://www.cdc.gov/statesystem/excisetax.html>

State Taxes on Cigarettes

STATE System Excise Tax Fact Sheet

Excise Tax Rates on Packs of Cigarettes by State

(n=51; In effect as of September 30, 2015)



State Taxes on Combustibles

Excise Taxes on Combustible Tobacco Products

In effect as of September 30, 2015 (n=51)

Tobacco Product	State	Tax	State	Tax	State	Tax
Cigarette	Alabama	\$0.425 per pack	Florida	\$1.339 per pack	Louisiana	\$0.860 per pack
Cigar		\$0.0405 each		No Provision		20% Manufacturer's Invoice Price
Little Cigar		\$0.0800 per pack of 20		No Provision		8% Manufacturer's Invoice Price
Pipe		\$0.0356 per ounce		85% Wholesale Sales Price		33% Manufacturer's Invoice Price
Roll-Your-Own		\$0.0356 per ounce		85% Wholesale Sales Price		33% Manufacturer's Invoice Price
Cigarette	Alaska	\$2.000 per pack	Georgia	\$0.370 per pack	Maine	\$2.000 per pack
Cigar		75% Wholesale Price		23% Wholesale Cost Price		20% Wholesale Sales Price
Little Cigar		75% Wholesale Price		\$0.0500 per pack of 20		20% Wholesale Sales Price
Pipe		75% Wholesale Price		10% Wholesale Cost Price		20% Wholesale Sales Price
Roll-Your-Own		75% Wholesale Price		10% Wholesale Cost Price		20% Wholesale Sales Price
Cigarette	Arizona	\$2.000 per pack	Hawaii	\$3.200 per pack	Maryland	\$2.000 per pack
Cigar		\$0.2180 each		50% Wholesale Price		15% Wholesale Price
Little Cigar		\$0.4405 per pack of 20		\$3.2000 per pack of 20		70% Wholesale Price
Pipe		\$0.2875 per ounce		70% Wholesale Price		30% Wholesale Price
Roll-Your-Own		\$0.2875 per ounce		70% Wholesale Price		30% Wholesale Price

State Taxes on Non-Combustibles

Excise Taxes on Non-Combustible Tobacco Products

In effect as of September 30, 2015 (n=51)

Tobacco Product	State	Tax	State	Tax	State	Tax
Chewing Tobacco	Alabama	\$0.015 per ounce	Florida	85% Wholesale Sales Price	Louisiana	20% Manufacturer's Invoice Price
Dissolvable Tobacco		No Provision		No Provision		20% Manufacturer's Invoice Price
Dry Snuff Tobacco		\$0.0100 per ounce		85% Wholesale Sales Price		20% Manufacturer's Invoice Price
Moist Snuff Tobacco		\$0.0100 per ounce		85% Wholesale Sales Price		20% Manufacturer's Invoice Price
Snus Tobacco		No Provision		85% Wholesale Sales Price		20% Manufacturer's Invoice Price
Chewing Tobacco	Alaska	75% Wholesale Price	Georgia	10% Wholesale Cost Price	Maine	\$2.0200 per ounce
Dissolvable Tobacco		75% Wholesale Price		No Provision		No Provision
Dry Snuff Tobacco		75% Wholesale Price		10% Wholesale Cost Price		\$2.0200 per ounce
Moist Snuff Tobacco		75% Wholesale Price		10% Wholesale Cost Price		\$2.0200 per ounce
Snus Tobacco		75% Wholesale Price		10% Wholesale Cost Price		\$2.0200 per ounce
Chewing Tobacco	Arizona	\$0.2225 per ounce	Hawaii	70% Wholesale Price	Maryland	30% Wholesale Price
Dissolvable Tobacco		No Provision		70% Wholesale Price		No Provision
Dry Snuff Tobacco		\$0.2225 per ounce		70% Wholesale Price		30% Wholesale Price
Moist Snuff Tobacco		\$0.2225 per ounce		70% Wholesale Price		30% Wholesale Price
Snus Tobacco		\$0.2225 per ounce		70% Wholesale Price		30% Wholesale Price

State Taxes on E-Cigarettes

Through e-cigarette-specific legislation:

- KS (\$0.20 per milliliter of consumable material “and a proportionate tax at the like rate on all fractional parts thereof”)
- LA (\$0.05 per milliliter of nicotine)
- NC (\$0.05 per fluid milliliter of consumable product)
- DC (70% Wholesale Price)

Through interpretation of existing legislation

- MN (95% Wholesale Price)

Updated CDC Data

CDC PUBLIC HEALTH GRAND ROUNDS

E-cigarettes: An Emerging Public Health Challenge



October 20, 2015



U.S. Department of
Health and Human Services
Centers for Disease
Control and Prevention

NCHS Data Brief ■ No. 217 ■ October 2015

Electronic Cigarette Use Among Adults: United States, 2014

Charlotte A. Schoenborn, M.P.H.; and Renee M. Gindi, Ph.D.

Key findings

Data from the National Health Interview Survey

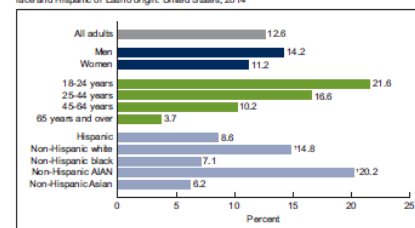
- In 2014, 12.6% of adults had ever tried an e-cigarette even one time, with use differing by sex, age, and race and Hispanic or Latino origin.
- About 3.7% of adults currently used e-cigarettes, with use differing by age and race and Hispanic or Latino origin.
- Current cigarette smokers and former smokers who quit smoking within the past year were more likely to use e-cigarettes than former smokers who quit smoking more than 1 year ago and those who had never smoked.
- Among current cigarette smokers who had tried to quit smoking in the past year, more than one-half had ever tried an e-cigarette and 20.5% were current e-cigarette users.
- Among adults who had never smoked cigarettes, 3.2% had ever tried an e-cigarette. Ever having used an e-cigarette was highest among never smokers aged 18–24 (9.7%) and declined with age.

Electronic cigarettes (e-cigarettes) are battery-powered products that typically deliver nicotine in the form of an aerosol (1). E-cigarettes have been marketed as both a smoking cessation tool and an alternative to conventional cigarettes (2). Results from several studies suggest recent rapid increases in e-cigarette use (3–7). In light of ongoing declines in conventional cigarette smoking prevalence (8), it is important to understand the extent to which e-cigarettes are being used among U.S. adults, both overall and by conventional cigarette smoking status. This report provides the first estimates of e-cigarette use among U.S. adults from a nationally representative household interview survey, by selected demographic and cigarette smoking characteristics.

Keywords: electronic nicotine delivery system (ENDS), e-cigarettes, National Health Interview Survey

In 2014, 12.6% of adults had ever tried an e-cigarette even one time in their lifetimes, with use differing by sex, age, and race and Hispanic or Latino origin.

Figure 1. Percentage of adults who had ever tried an e-cigarette in their lifetime, by sex, age, and race and Hispanic or Latino origin: United States, 2014



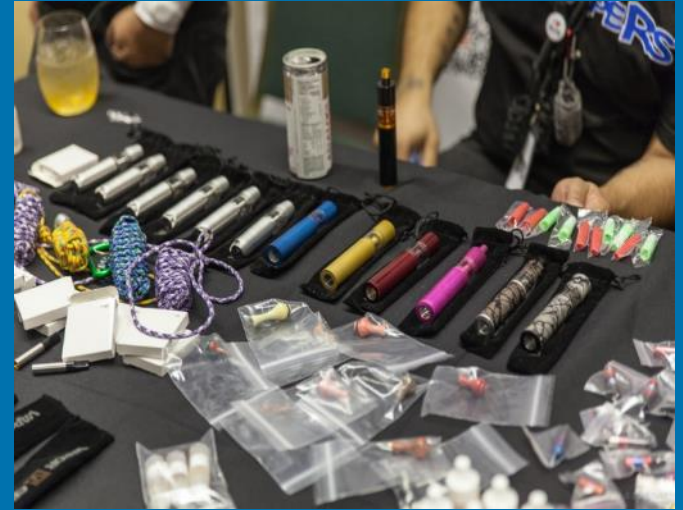
Significantly different from Hispanic, non-Hispanic black, and non-Hispanic Asian subgroups.
NOTE: Asian is American Indian or Alaska Native. White are and age groups, all subgroups are significantly different from each other. There is no significant trend by age group.
SOURCE: CDC/NCHS, National Health Interview Survey, 2014.



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Disease Control and Prevention
National Center for Health Statistics



Many Kinds of E-Cigarettes



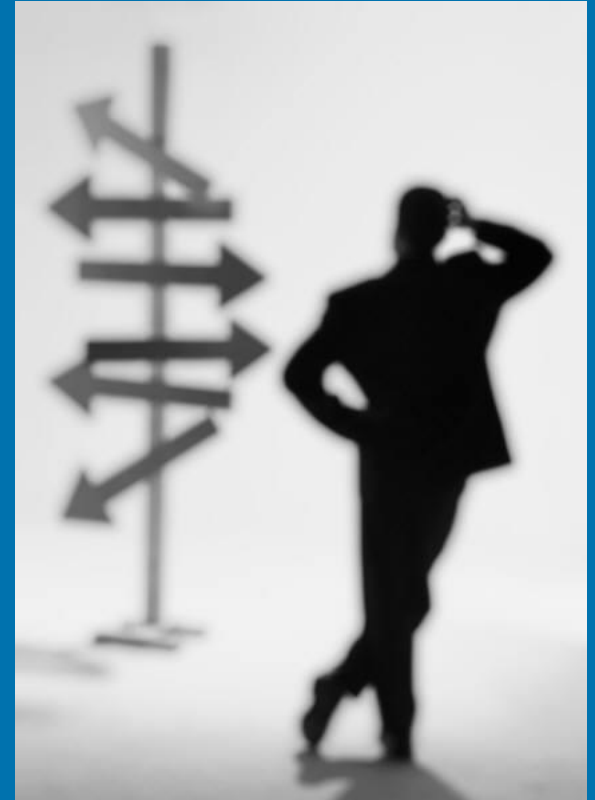
Baseline Questions

Which products should be taxed?

What is the appropriate level of taxation?

How should the tax be structured?

How is the tax enforced?



The Minnesota Experience

Subd. 19. Tobacco products. "Tobacco products" means any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, ~~prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking~~; but does not include cigarettes as defined in this section. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Minn. Stat. § 297F.01, Subd. 19 (2010)

Public Health Approach

- Ad valorem tax
- Retail tax instead of wholesale tax (except in states with no retail license laws or sales tax)
- Revenue dedicated to tobacco control programs
- In conjunction with cigarette tax
- Equalization

Tobacco Control
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Fact Sheet

E-Cigarette Taxation: Frequently Asked Questions

Over the past few years, the sale of e-cigarettes and related products has expanded exponentially. Since there is virtually no federal regulatory oversight of the e-cigarette market, many state and local governments have scrambled to enact a variety of restrictions on the sale and use of these products. While most states have enacted youth access restrictions and a few states, along with many local governments, have included e-cigarettes in smoke-free laws, the latest frontier in e-cigarette regulation seems to be taxation.



Taxation is unique because it is an area in which the U.S. Food and Drug Administration has no regulatory authority so, unless Congress were to act, the taxation of e-cigarettes is solely in the domain of states and, where allowed by state law, local governments. Because every state's tax code is different, it is essential to work with an attorney who is familiar with your jurisdiction's tax code to ensure that any tax is appropriately tailored to meet your policy needs. In other words, there is no one-size-fits-all approach in this complicated policy area. This fact sheet answers a few of the most frequently asked questions about taxing e-cigarettes and related products.¹

Q: Why tax e-cigarettes?

A: Most e-cigarettes contain nicotine, an addictive drug. Nicotine itself is harmful to health. In addition to acute poisoning risks, exposure to nicotine has been shown to harm both maternal and fetal health during pregnancy, and may have a lasting negative impact on adolescent brain development. Therefore, decreasing the prevalence of nicotine use, especially among children, can significantly benefit public health. Increasing price is one way to accomplish this goal. Studies have shown that increasing the price of tobacco products results in a decrease in initiation by new users and a decrease in the amount of tobacco use by current users.² This is especially true among youth, who are the most price-sensitive consumers. Therefore, increasing the tax on e-cigarettes would help accomplish important public health goals.

Most e-cigarettes contain nicotine that is derived from tobacco and are tobacco products.³ Therefore, they should be taxed as tobacco products to maintain an equitable tax burden. Excluding them from tobacco taxes serves as a de facto discount, which could lead to higher initiation rates and increased use. Also, it is clear that quitting all tobacco products, including e-cigarettes, is better for one's health than using e-cigarettes. Studies have not shown e-cigarettes to be effective tobacco cessation products. In addition, preliminary research has shown that

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